

circumstances warrant, for example, to address changes in the credit union's operations; and

(5) Annual testing.

[72 FR 42274, Aug. 2, 2007, as amended at 77 FR 71085, Nov. 29, 2012]

## **PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS**

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AUTHORITY: 12 U.S.C. 1786(t).

SOURCE: 76 FR 30517, May 26, 2011, unless otherwise noted.

### **§ 750.0 Scope.**

(a) This part limits and prohibits, in certain circumstances, the ability of Federally insured credit unions, including Federally and state chartered natural person credit unions and Federally and state chartered corporate credit unions, to enter into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties (IAPs).

(b) The limitations on golden parachute payments apply to troubled Federally insured credit unions that seek to enter into contracts to pay or to make golden parachute payments to their IAPs. A “golden parachute payment” is generally considered to be any payment to an IAP which is contingent on the termination of that person's employment and is received when the Federally insured credit union making the payment is troubled. The definition of golden parachute payment does not include payments pursuant to qualified retirement plans, non-qualified bona fide deferred compensation plans, nondiscriminatory severance pay plans, other types of common benefits plans, state statutes and death benefits. Certain limited exceptions to the golden parachute payment prohibition are provided for in cases involving

unassisted mergers and the hiring of new management to help improve a troubled Federally insured credit union's financial condition. A procedure is also set forth to permit a Federally insured credit union to request permission to make what would otherwise be a prohibited golden parachute payment.

(c) The limitations on indemnification payments apply to all Federally insured credit unions, including state chartered credit unions, regardless of their financial health. Generally, this part prohibits Federally insured credit unions from indemnifying an IAP for that portion of the costs sustained with regard to an administrative proceeding or civil action commenced by NCUA or a state regulatory authority that results in a final order or settlement pursuant to which the IAP is assessed a civil money penalty, removed from office, prohibited from participating in the affairs of a Federally insured credit union or required to cease and desist from an action or take an affirmative action described in section 206 of the Federal Credit Union Act, 12 U.S.C. 1786. There are exceptions to this general prohibition. First, a Federally insured credit union may purchase commercial insurance to cover these expenses, except judgments and penalties. Second, the credit union may advance legal and other professional expenses to an IAP directly (except for judgments and penalties) if its board of directors makes certain specific findings and the IAP provides a written affirmation and agrees in writing to reimburse the credit union if it is ultimately determined that the IAP violated a law or regulation or has engaged in certain unsafe or unsound practices or breaches of fiduciary duty. For Federal credit unions, fiduciary duty is defined in 701.4 of this chapter. State chartered credit unions should look to applicable state law.

### **§ 750.1 Definitions.**

As used in this part:

(a) *Act* means the Federal Credit Union Act.

(b) *Benefit plan* means any employee benefit plan, contract, agreement or other arrangement subject to the requirements in § 701.19 of this chapter;